No. 818

In the Supreme Court of the United States

OCTOBER TERM, 1958

MARIE S. KIRKPATRICK, MARGARET S. HAYES AND J. H. PEARSON, CO-ADMINISTRATORS OF ESTATE OF N. B. SMITHEY, DECEASED, PETITIONERS

v.

P. K. SANDERS, DISTRICT DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The oral opinion of the district court (Supp. R. 33–35)[1] is not reported. The opinion of the court of appeals (Pet. 15–20) is reported at 261 F. 2d 480.

JURISDICTION

The judgment of the court of appeals was entered on October 16, 1958 (Pet. 15). A petition for rehearing was denied on January 14, 1959 (Pet. 2). The petition for a writ of certiorari was filed on April 7,

[1] "R." refers to the taxpayers' (appellants') appendix in the court of appeals; "Supp. R.," to the Director's appendix.

1959. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether there was sufficient evidence that certain transfers of property were sales rather than gifts to require the issue to be submitted to the jury.

2. Whether under North Carolina law deeds of gift not registered within two years as required by § 47-26 of the General Statutes of North Carolina are void so that title to the property revests in the grantor.

3. Whether the payment of a gift tax on a transfer of property by a decedent *inter vivos* precludes the later inclusion of the property in the decedent's gross estate for estate tax purposes.

STATUTES INVOLVED

Internal Revenue Code of 1939 (26 U.S.C., 1952 ed.):

> SEC. 811. GROSS ESTATE.
>
> The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—
>
> (a) *Decedent's Interest.*—To the extent of the interest therein of the decedent at the time of his death;
>
> * * * * *
>
> SEC. 813. CREDITS AGAINST TAX.
>
> (a) *Gift Tax.*—
>
> * * * * *

(2) *Revenue Act of 1932 or Chapter 4.*—

(A) If a tax has been paid under chapter 4 or under Title III of the Revenue Act of 1932, 47 Stat. 245, on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this subchapter, then there shall be credited against the tax imposed by section 810 or 860 the amount of the tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 810 or 860 (after deducting from such tax the credits provided by section 813 (a)(1) and (b)) as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under subsections (d) and (e) of section 812.

General Statutes of North Carolina:

§ 47-26. *Deeds of gift.*—All deeds of gift of any estate of any nature shall within two years after the making thereof be proved in due form and registered, or otherwise shall be void, and shall be good against creditors and purchasers for value only from the time of registration.

STATEMENT

This is a suit for refund of estate taxes paid by petitioners as co-administrators of the estate of N. B. Smithey, deceased. After a trial before a jury, the district court granted the Director's motion for a directed verdict (Supp. R. 33–35). The court of appeals affirmed (Pet. 20). The material facts may be summarized as follows:

On December 16, 1941, the decedent and his wife executed two separate warranty deeds, the first conveying a parcel of real estate in North Carolina valued at $27,000 to his daughter, Marie; and the second, a parcel valued at $23,918 to his daughter, Margaret. The first deed recited a consideration of $100 and "other valuable considerations"; the second, $1 and "other valuable considerations." Internal Revenue transfer stamps in the amounts of $30 and $26 were affixed to the deeds and cancelled. Shortly thereafter, the daughters leased the properties back to the father, who continued to use them in his business until his death in 1953, paying annual rentals of $900 on each property (R. 51–67; Pet. 17). The deed to Marie was not registered until October 9, 1951, and the deed to Margaret was not registered until September 17, 1953 (Supp. R. 18, 19).

In 1942 the decedent filed a gift tax return reporting the gifts of the real estate to his daughters, and paid a gift tax in the amount of $409.79. The daughters filed donee returns also reporting the gifts (Supp. R. 36–39; Pet. 17).

The decedent died intestate on September 3, 1953, a resident of North Carolina. The taxpayers-admin-

istrators filed an estate tax return in 1954 in which they did not include the real estate deeded to the daughters in 1941. The Internal Revenue Service, in auditing the return, included the property in decedent's gross estate. The taxpayers paid the resulting tax and filed a claim for refund which was rejected. Thereafter, this suit was commenced (R. 2–7).

ARGUMENT

1. At the trial, taxpayers' main contention was that the 1941 transfers to the daughters were sales rather than gifts.[2] The district court, at the close of the evidence, directed a verdict for the Director on the ground that only one conclusion could be reached from the evidence—*i.e.*, that there was no substantial consideration and the deeds in question were meant as deeds of gift (Supp. R. 33–35). The court of appeals reviewed the evidence and reached the same conclusion (Pet. 16–20). That decision was clearly correct. The record (particularly the gift tax returns and the testimony of the daughters showing no substantial payments by them) conclusively demonstrates that there was only nominal, if any, consideration and that the transfers amounted in essence to gifts.

2. In directing the verdict, the district court also held that, as gifts, the transfers were void as a matter of law because not registered within the two year

[2] If the transfers were effective sales, passing title absolutely to the daughters, decedent had no interest in the property at the time of his death which would be includible in his gross estate under § 811(a) of the Internal Revenue Code of 1939, *supra*, p. 2.

period prescribed by § 47–26 of the General Statutes of North Carolina (*supra*, p. 3). The court of appeals affirmed, holding that under North Carolina law, as evidenced by such cases as *Winstead* v. *Woolard*, 223 N.C. 814, the title to the property revested in the decedent *ab initio* upon the failure of the daughters to register the deeds within the prescribed period (Pet. 19). Taxpayers do not attempt to controvert the cases cited by the court of appeals but rely instead (Pet. 11) upon an earlier case (*Pierce* v. *Stallings*, 163 N.C. 107) relating to fraudulent conveyances, which is without application here. In any event, the question, solely one of state law, is not appropriate for review by this Court.

3. Taxpayers contend (Pet. 7–13) that the Government should not be allowed to include the properties in the grantor's gross estate since it accepted payment of gift tax in 1942 and did nothing further about the matter until in or about 1955 when a deficiency in estate tax was determined. Clearly, however, the mere payment of gift tax on a donative transaction does not preclude the imposition of the estate tax if the property is otherwise includible in the grantor's gross estate. *Smith* v. *Shaughnessy*, 318 U.S. 176, 179; *Commissioner* v. *Berger*, 201 F. 2d 171, 173 (C.A. 2); cf. *Burnet* v. *Porter*, 283 U.S. 230. An appropriate credit for the gift taxes paid was allowed in computing the amount of estate taxes due (see § 813, *supra*, pp. 2–3), and taxpayers are entitled to no more. See *Smith* v. *Shaughnessy*, *supra*.

CONCLUSION

The decision is correct. The case presents no question of general importance. There is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1959.

U. S. GOVERNMENT PRINTING OFFICE: 1959